IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.2.2002

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THE HON'BLE MR.JUSTICE A.K.RAJAN

W.P.No.21297 of 1994

Kattabomman Transport Corporation
Limited, rep its Managing Director,
Tirunelveli. .. Petitioner

Vs.

1. The Labour Court, Tirunelveli.

2. Subramanian .. Respodnents

Petition filed under Article 226 of the Constitution of India for
issue of writ of certiorari as stated therein.

! For Petitioner : Mrs.Kala Ramesh
^ For Respondents: Mr.K.S.Narayanan (R2)

: ORDER

The writ petition is filed for issue of writ of certiorari to
call for the records of the first respondent in C.P.No.367 of 1992 dated
9.7.1994.
2. The second respondent was employed as Conductor in the writ
petitioner Corporation. Some charges were framed against him for his
misconduct and after enquiry he was dismissed from service. The second
respondent challenged the dismissal of service before the Labour Court
and the Labour Court found that the charges were proved, but at the same
time held, while exercising the powers under Section 11(A), that the
punishment was excessive and therefore it modified the order of
termination to one of reinstatement without back wages. Subsequent to
that the second respondent filed a claim petition before the Labour Court
claiming the amounts payable for incentive allowance, dress allowance and
stitching charges, washing allowance etc., and also prayed for payment of
bonus.
3. The Labour Court rejected his claim with respect to
all allowances except bonus. The Labour Court passed an award for

payment of Bonus amounting to Rs.32,650 as payable to the second respondent. In this writ petition that award has been challenged as contrary to law.

4. Learned Counsel for the writ petitioner submitted that under Section 8 of the Payment of Bonus Act, Bonus is payable, only where the person has worked acutally for 240 days. Under Section 9, the person who has been dismissed from service for mis-conduct or a person who is involved in theft and few other acts specified therein would not be eligible for Bonus. But the Labour Court has awarded bonus even though the workman did not work . Therefore, the order is liable to be set aside.

5. Learned counsel for the second respondent argued that the bonus is not part of wages. It is payable eventhough a person has not actually worked during the relevant period. The term "worked" appearing in Section 8 has been interpreted in a decision reported in 1972 (1) LLJ 15 (VELLORE ELECTRICITY SYSTEM VS. K.PALANI). Relying on the decision, learned counsel for the second respondent contended that even though a person has not actually worked, he is eligible for bonus, if he is reinstated into service.

6. In the above cited case, the workman who had been dismissed from service illegally was ordered to be reinstated into service with back wages . Hence the person is said to have legally worked during that period and therefore he is eligible for bonus and this Court ordered payment of bonus . That is a judgment where a worker was reinstated with backwages. In that case after the order of the High Court, a claim petition was filed for all benefits and the worker was paid all the benefits but bonus was not paid. Subsequently, he filed another petition claiming bonus. That was allowed by this Court. Therefore, the Counsel for the 2nd respodnent argued that the bonus is payable even in the present case, in view of the decision of this Court. The facts of the case referred to above is different from the present case. In the said case, the worker was reinstated with backwages. Therefore, backwages includes all the attendant benefits including bonus. Hence this Court ordered that bonus shall be payable accordingly. In the case on hand, the Labour Court has specifically ordered reinstatement without backwages. Without backwages means no other benefits such as allowances is payable. The Labour Court has also held that the workman is not eligible for allowances like washing allowance, dress allowance, stitching charges, etc. But the Labour Court has held that bonus alone was payable. Bonus is nothing but deferred wages as per the decision of the Supreme Court. Therefore, when a person is reinstated without back wages, bonus is also not payable since it is a deferred wages. The decision relied upon by the learned counsel for the second respondent, is not applicable to the present case. Therefore, the said decision does not help the second respondent .

7. In the result, the award of the Labour Court directing payment of bonus to the second respondent is not legally sustainable and hence it is set aside. The Writ petition is allowed as prayed for.

8. Learned counsel appearing for the petitioner as well as respondent submitted that the amount was deposited before the Labour

Court and it was also withdrawn by the employee. In view of the order passed by this Court, the Management is entitled to recover the amount from the workman.
9. With this observation, the writ petition is allowed.

No costs.

26.2.2002

Index:Yes/No
Internet: Yes
krr

Sd/
Asst. Registrar
//TRUE COPY//

SUB-ASSISTANT REGISTRAR
STATISTICS (C.S.)

A.K.RAJAN,J.

W.P.No.21297 of 1994

Dt. 26.2.2002